IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1021 OF 2005

IN

SUIT NO 3151 OF 1997

Mrs Shirin Sethna .. Applicant

versus

Dr.Karan Singh & ors .. Defendants

Ms.R.Rodrigues i.b Mr.Y.N.Adhia for Plaintiff

Mr.R.Munshi i.b Malvi Ranchoddas & Co for Deft nos. 2 & 3

None for Defendant no. 3

Mr.R.J.Mane AGP for Respondent nos. 1 to 3.

CORAM : Smt Roshan Dalvi, J
DATED : 23rd June, 2006

P.C.

1. This Notice of Motion is taken out by the defendant no. 4 essentially against the defendant no. 3 in respect of certain obstruction to the name of the defendanto. 4 being entered in the revenue records before the Tahsildar at village Wadgaon Talegaon District Pune. The suit has been filed in 1997 essentially for ascertainment and determination of the estate of the deceased father of the plaintiff and the defendant no.3. The deceased is stated to have left his last will and testament dated 25th December, 1984. The will is not probated. It is stated that it is essentially because, the deceased had almost no property which could be bequeathed under the will. Certain immovable properties were dealt with by the deceased inter vivos. One of these is the property

in dispute in this Notice of Motion. It is an open land at village Wadgaon Talegaon District PUne.

2. The deceased was a trustee of a charitable trust registered with the Charity Commissioner under the Bombay Public Trust Act in the name of " The Society of Servants of God."

3. The deceased had made an application under the Bombay Public Trust Act, 1950 to the Assistant Charity Commissioner on 3rd April, 1956 and brought on record ofthe Charity Commissioner the said property as the property of the trust. It is stated to have remained with the trust since. Consequently, an entry with regard to the said property shows the name of the society in the records of the Charity Commissioner. The trust is stated to be paying revenue to the government, though no revenue receipts are produced.

4. The Advocate for the Charity Commissioner has produced a certified extract of the records of the Charity Commissioner showing the trust of the society of the Servants of God. The name of the defendant no. 4 as the secretary of the Society of Servants of God is added in the records of the

Charity Commissioner on and from 1st Febraury 2005.

5. The defendant no. 4, as the secretary of the said trust, applied for the name of the said trust being brought on the revenue records before the Tahsildar of Village Wadgaon Talegaon. It is his contention that the Tahsildar refused to make an entry in the name of the society as the owner of the trust in view of the obstruction and instructions of the defendant no. 3.

6. The defendant no. 3, the brother of the plaintiff and son of the deceased, is one of the executors of the will dated 25th December, 1984 ofthe deceased which has not yet been probated. It is contended on behalf of the defendant no. 4 that the will itself sets out that the deceased had no wordly possessions which would necessitate making of a will and that the said property has been declared by the deceased to be acquired by him for the sole benefit of the trust and that he had no property or any other interest of any kind therein. It is therefore, contended that the defendant no. 3 who is the executor of the will and hence in the position of trust cannot set up an interest conflicting with what is mentioned in the will

itself.

7. It is seen that the property was indeed acquired and used for the benefit of the trust since the application to the Charity Commissioner made by the deceased on 3rd April, 1956 itself. The records of the Charity Commissioner bear out such a fact. The will is consistent with that aspect. An application for entering the name in the revenue records, though belatedly made in 2001, cannot be refused by the Tahsildar in view of this position.

8. I am told that in the original Notice of Motion takenout by the plaintiff for ascertainment of the estate of the deceased in the suit, an affidavit came to be filed by the defendant no. 2 one on 15th October, 1997 in which the aforesaid facts have been mentioned. Upon such an affidavit being filed, the Notice of Motion came to be withdrawn by the plaintiff on 13th June, 2001. This Notice of Motion has been served inter alia upon the Advocate for the defendant no. 3 on 29th April, 2005. The defendant no. 3 is stated to be a resident of Canada. The defendant no. 3 appeared in this NoOtice of Motion through his Advocate one Mr.

S.P.Tripathi i.b the Advocate on record who was served with the Notice of Motion on 16th March, 2006. No affidavit in reply of the defendant no. 3 is yet filed.

9. The Advocate appearing for the Charity Commissioner states that the property has been registered in the records of the Charity Commissioner and has produced its certified extract. In view thereof, the reliefs in the Notice of Motion deserve to be granted.

O R D E R

The Tahsildar of village Wadgaon talegaon District Pune shall enter the name of the Society of Servants of God in their records upon following the necessary procedure. No order as to costs.

(Smt Roshan Dalvi, J)

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